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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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11/26/2001

Jules Zecchino

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2755

7590 05/08/2008
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EXAMINER

FUBARA, BLESSING M

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

05/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/995,358	Applicant(s) ZECCHINO ET AL.	
	Examiner BLESSING M. FUBARA	Art Unit 1618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 10 April 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
 See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Michael G. Hartley/
 Supervisory Patent Examiner, Art Unit 1618

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments that Wheeler's composition does not contain salt in the aqueous phase at from about 1 to about 10% is not persuasive since the formulation of Wheeler may contain salts at 0.05 to 20% and preferably at 0.2 to 1% in the aqueous (page 4, lines 2-4) with the 0.05 to 20% overlapping with recited range. It is also noted claim 1 says that the aqueous phase contains salt so that the alginate salt or the cellulose salt meets that limitation. The examples in Wheeler represent certain embodiments of Wheeler's composition so that applicant's arguments that Example 1 of Wheeler, a skin cleansing composition does not contain a salt is not persuasive because Wheeler discloses that the aqueous phase contains salts of alginate gums (page 4, lines 2-4).

Furthermore, the examiner disagrees with applicant that the surfactant in Wheeler is greater than 1% as is in Examples 2 and 3, which contain surfactant in amounts of 13.5% because examples 2 and 3 are specific embodiments of Wheeler in which the surfactant amount is high in view of being shampoo. However, Wheeler specifically discloses that the biliquid foam comprises surfactants to stabilize the formulation with the surfactant present at between 0.05 and 0.5% (3rd full paragraph). It is also noted that the applicant on page 3 of the remarks at the 3rd full paragraph acknowledges Wheeler to teach formulation that is at a pH of less than 7 and that has surfactant at less than 1%.

Applicant further argues that using the Clariant polymeric sulfonic acid gellant in the formulation of Wheeler would not result in applicant's claimed composition because the claimed composition contains substantial amounts of electrolytes and less than 1% surfactant. But the examiner disagrees because Wheeler teaches that the composition has less than 1% surfactant, because the claims do not recite the presence of electrolytes, instant claim 1 only says that the aqueous phase contains salt and the alginate salt satisfies that limitation; also page 5, at the 1st full paragraph, Wheeler contemplates the use of salts such as the salt of stearic acid.

Applicant's argument that the "Clariant brochure merely discloses that the polymeric sulfonic acids of the present invention are known in the art for use as a gellant ... and that the gellant may be used under low pH conditions" supports motivation to use the gellant in the composition of Wheeler, which is at a pH of less than 7, an acidic pH. Shampoos are not the only compositions described by Wheeler (4th full paragraph of page 3).